

MEMORANDUM ACCOMPANYING ORDER FOR HEARING

On October 24, 1973, Local No. 74, International Association of Fire Fighters filed a petition with the Wisconsin Employment Relations Commission requesting the Commission to initiate final and binding arbitration, pursuant to Section 111.77 of the Municipal Employment Relations Act for the purpose of resolving an impasse between the City of Superior and said Labor Organization with respect to negotiations for a collective bargaining agreement covering fire fighting personnel employed by said Municipal Employer for the year 1974. On December 19, 1973, the Commission issued Findings of Fact, Conclusion of Law, Certification of Results of Investigation and Order Requiring Arbitration wherein, among other things, it ordered compulsory final offer arbitration, and that both the Municipal Employer and said Labor Organization file, on or before January 4, 1974, with the Commission, in written form, their final offers as of December 5, 1973. On January 4, 1974, said Labor Organization filed its final offer as it claimed existed on December 5, 1973. Also on January 4, 1974, the Municipal Employer filed its final offer as it claimed existed on December 5, 1973. On the same date the Labor Organization advised the Commission that the Municipal Employer was not participating in the selection of the arbitrator from the panel furnished by the Commission, and on January 15, 1974, the Commission directed a letter to the Labor Organization, a copy going to the Municipal Employer, wherein it indicated that unless the Commission was informed by January 22, 1974, that the parties had selected the arbitrator, the Commission would ask the Attorney General to seek enforcement of the arbitration Order. On January 18, 1974, the Commission received a communication, in writing, from the Municipal Employer contending, among other things, that the final offer submitted by the Labor Organization was not its final offer as of December 5, 1973. In addition, the Municipal Employer indicated that the Municipal Employer "would be in a position to provide the WERC with the authority to strike for them or conversely to allow the Firefighters to strike the four names they desire and choose their own arbitrator." On January 22, 1974, the Commission received a communication from the Labor Organization indicating that the final offer it submitted to the Commission was its final offer as of December 5, 1973, and further in said letter the Labor Organization contended that it was of the opinion that the Municipal Employer "had shown no intention of complying with the Commission's Order of December 19, 1973."

Because of the position taken by the Municipal Employer, indicating that it did not desire to participate in the selection of the arbitrator, the Commission on its own motion on January 22, 1974, issued an Order appointing David B. Johnson of Madison, Wisconsin, as the arbitrator, with the authority to issue a final and binding award in the matter.

On January 31, 1974, the Municipal Employer filed a complaint with the Commission alleging that the Labor Organization had violated Section 111.77(4)(b) of the Municipal Employment Relations Act in not filing its final offer as required in the original Order of the Commission. Upon receipt of said complaint the Commission reviewed the file and discovered that the date set by it with respect to the date of the final offers was the date of the informal investigation, rather than the date on which the petition was filed, as required in Section 111.77(4)(b). Therefore, on February 8, 1974, the Commission amended its original arbitration Order and required the parties to file their final offers as they existed on the date of the filing of the petition, namely, October 24, 1973.

On February 14, 1974, the Labor Organization submitted to the Commission what it purported to be its final offer as of October 24, 1973. On February 20, 1974, the Municipal Employer filed its final offer as it claimed existed on October 24, 1973. On January 31, 1974, the Municipal Employer filed a complaint and on February 20, 1974, it also filed a new complaint alleging that the Labor Organization had violated Section 111.77(4)(b) by not filing its final offer as it existed on October 24, 1973, but rather that it filed an offer which had been made on July 10, 1973.

It should be noted that an examination of the correspondence in the Commission's files further discloses that on January 26, 1974, David B. Johnson, the arbitrator appointed by the Commission, attempted to establish dates for pre-hearing conferences or dates for the hearing in the arbitration matter. The Labor Negotiator for the Municipal Employer has requested the arbitrator to withhold setting any dates for conferences or meetings until the Commission had made a determination on the complaints filed by the Municipal Employer. A similar expression was contained in the letter of February 25, 1974, over the signature of the Labor Negotiator of the Municipal Employer to the appointed arbitrator.

There is no provision in the Municipal Employment Relations Act, nor in the rules of the Commission, which requires that an arbitration proceeding under Section 111.77 be held in abeyance as a result of a complaint alleging that any party to the arbitration proceeding has not complied with the final offer requirements of Section 111.77 of the Municipal Employment Relations Act. The complaints allege that the Labor Organization has not filed its final offer as said offer existed as of the date of the filing of the arbitration petition. It should be noted that Section 111.77(4)(b) permits either party to the arbitration proceeding the opportunity to amend its final offer within five days of the date of the arbitration hearing.

Under the circumstances which exist herein, we do not conclude that the complaint proceeding bars the parties from proceeding to arbitration, and, therefore, the Commission expects the parties to cooperate with the arbitrator in order to expedite the conduct of the arbitration hearing.

Dated at Madison, Wisconsin, this 7th day of March, 1974.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Thomas Slavney
Morris Slavney, Chairman

Howard S. Bellman
Howard S. Bellman, Commissioner